

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

[2013] NZERA Auckland 546
5436528

BETWEEN MOHAMMED ADEEL
 ALEEM ALI
 Applicant

AND NORVEC NZ LIMITED
 Respondent

Member of Authority: Robin Arthur

Representatives: Applicant in person
 Sheryl Connell, Counsel for Respondent

Investigation: On the papers

Determination: 27 November 2013

DETERMINATION OF THE AUTHORITY

- A. By no later than seven days from the date of this determination Norvec NZ Limited (Norvec) must pay Mohammed Ali the amounts that were due to him on 30 September and 30 October 2013 (under recorded terms of settlement certified by a mediator under s149 of the Employment Relations Act 2000).**
- B. Leave is reserved for Mr Ali to make a further application relating to another instalment due to him from Norvec on 30 November 2013.**
- C. Norvec must also pay Mr Ali an additional \$71.56 to reimburse him for the fee paid to lodge his application in the Authority.**

[1] Mohammed Ali sought orders from the Authority to enforce the terms of a settlement agreement made with his former employer Norvec NZ Limited (Norvec). The agreement was certified by a mediator under s149 of the Employment Relations Act 2000 (the Act) on 4 July 2013. Mr Ali said two of the five instalments of an agreed sum had been paid to him but Norvec did not pay amounts due to him by 30 September and 30 October 2013.

[2] Courier records on the Authority file show correspondence from the Authority about Mr Ali's application was delivered to the company's registered office. Norvec did not lodge a statement in reply in the permitted timeframe or respond to a Member's Minute that gave the company a further opportunity, by no later than 22 November 2013, to provide information or to be heard about the orders that Mr Ali sought.

[3] By letter sent electronically to the Authority offices after the close of business on 25 November 2013 Ms Connell advised she was instructed by Norvec on 20 November in relation to Authority notices sent to Norvec on 7 and 18 November. She advised that she had not contacted the Authority sooner due to personal family matters and that Norvec was now insolvent with creditors having filed for its liquidation in the High Court.

[4] Ms Connell advised Norvec was not able to pay amounts due under its terms of settlement with Mr Ali because of its "*insolvent position*".

[5] While s138(4A) of the Act allows for the Authority to order payment by instalments where a compliance order is made regarding payment of money (such as here to enforce the terms of a certified settlement agreement), I have not considered that necessary for a payment already broken into timed instalments. Neither is the prospect of liquidation a reason not to make such an order where a liquidator has not yet been appointed, the company remains registered, and there is no evidence before the Authority about the alleged financial position of Norvec (despite earlier opportunities for Norvec to respond). Although the money due to Mr Ali may have no statutory priority in the event of liquidation,¹ he is nevertheless entitled to have his rights confirmed among the ordinary creditors, to be paid now (in compliance with the

¹ Clause 2(e) of Schedule 7 of the Companies Act 1993.

order made under s137(a)(iii) and (3) of the Act as set out at A at the head of this determination) or considered in due course by a liquidator (if one were appointed).

[6] Leave is reserved for Mr Ali to seek further orders from the Authority in the event that Norvec does not pay the fifth and last instalment due to him by 30 November 2013. In that event Mr Ali would not need to pay another fee to the Authority if he were to seek further orders in respect of that instalment.

Robin Arthur
Member of the Employment Relations Authority